

FILED

AUG 11 2005

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 04-26068-C-7
)
CRAIG L. SALVAGNO and) DC No. MOH-1
RENE J. SALVAGNO,)
)
Debtors.)
_____)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION TO AVOID LIEN**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(K).

Findings of Fact

On July 5, 2005, debtors filed a motion, notice, and certificate of service requesting that this court avoid a judgment lien in favor of Citibank. A hearing was scheduled for August 9, 2005 to consider the motion. Upon review of the record, the court determined that the written record was adequate and that no oral argument was necessary.

The court notes that debtors' counsel filed a declaration regarding the proof of service, which states he

1 searched the Secretary of State's website for Citibank's
2 agent for service of process. However, the only results
3 showed that Citibank was "forfeited" and "dissolved."
4 Additionally, counsel contacted a bankruptcy representative
5 who informed him that she was not aware of any designated
6 agent for service of process. As a consequence, counsel
7 served Citibank c/o the attorney who recorded the abstract,
8 as well as a Centralized Bankruptcy Department within
9 Citibank.

10 Exhibit B to counsel's declaration is a letter
11 addressed to the debtor received from a bankruptcy
12 representative regarding the subject lien. The letter is
13 captioned "CITI" and the bankruptcy representative is
14 employed by "Citicorp Credit Services, Inc. USA."

15 Conclusions of Law

16 A. SERVICE REQUIREMENTS

17 Federal Rule of Bankruptcy Procedure 9014(b) requires
18 that a motion initiating a contested matter "shall be served
19 in the manner provided for service of a summons and
20 complaint by Rule 7004." Fed. R. Bankr. P. 9014(b).

21 Federal Rule of Bankruptcy Procedure 7004(b) (3)
22 provides in pertinent part:

23 Except as provided in subdivision(h), in
24 addition to the methods of service
25 authorized by Rule 4(e)-(j) F.R.Civ.P.,
26 service may be made within the United
27 States by first class postage prepaid as
28 follows... Upon a domestic or foreign
corporation or upon a partnership or
other unincorporated association, by
mailing a copy of the summons and
complaint to the attention of an
officer, a managing or general agent, or

1 to any other agent authorized by
2 appointment or by law to receive service
3 of process and, if the agent is one
4 authorized by statute to receive service
and the statute so requires, by also
mailing a copy of the defendant.

5 Fed. R. Bank. P. 7004(b)(3).

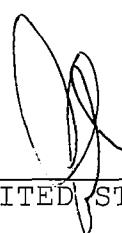
6 Here, debtors' service of motion does not comply with
7 the requirement to serve the motion to the attention of an
8 officer or other agent authorized as provided in Rule
9 7004(b)(3). Beneficial California, Inc. v. Villar (In re
10 Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). Although the
11 declaration states that counsel unsuccessfully searched for
12 Citibank's agent for service of process, Citibank's parent
13 company, Citicorp Credit Services, Inc., as it appears in
14 Exhibit B, does have an agent for service of process.

15 Alternatively, if an agent for service of process
16 cannot with reasonable diligence be found at the address
17 designated for personally delivering the process, the court
18 may make an order that the service may be made upon the
19 corporation by delivering by hand to the Secretary of State
20 one copy of the process for each defendant to be served,
21 together with a copy of the order authorizing such service.
22 See California Corporations Code § 1702 and California Code
23 of Civil Procedure § 416.10.

24 Accordingly, the motion is denied.

25 An appropriate order will issue.

26 Dated: August 11, 2005

27
28 
UNITED STATES BANKRUPTCY JUDGE